

**The Wharton School – University of Pennsylvania**  
**Corporate Restructuring**  
**FNCE 291/791**  
**LAW 908**

**Fall 2019**  
**Preliminary Course Syllabus**

*(Please note that this syllabus is subject to change over the duration of the course; however, the general structure and content of the course will remain the same.)*

**Professors**

James H.M. Sprayregen ([jamesspr@law.upenn.edu](mailto:jamesspr@law.upenn.edu))  
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**Teaching Assistants**

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**Classroom & Time**

Monday, 3:00 p.m. to 6:00 p.m.  
JMHH 370

**Course Description**

This course will explore the highly active and sophisticated dealmaking environment that is the hallmark of modern distressed corporate restructuring—both under the supervision of a federal court applying chapter 11 of the United States Bankruptcy Code or through an agreement reached by a company and its creditors in out-of-court negotiations.

The course is primarily comprised of two key components:

- The course will lay the foundation for a robust understanding of distressed dealmaking principles, with key concepts explained by three of the top practitioners in the restructuring field. In particular, the lectures will focus on the fundamental rights and obligations of debtors, creditors, and other parties in interest in the various types of major chapter 11 cases, providing critical insight into understanding the motivations, strategies, and available tools for chapter 11 participants (which also serve as the foundation for out-of-court deals).
- As part of the foundational work, the course will cover valuation methods used for distressed entities.

- The second component of the course is a series of case study panels. The professors survey the market trends from the previous year to bring together key participants from recent deals, including the CEO or chairman of the company, the judge, the lead banker and lead lawyer, and the lead investors to give their insight and perspectives to the class. These panels will provide students real-world insights into the most current issues in the field.

By the end of the course, the student should:

- be familiar with the legal environment which frames distressed restructurings
- be familiar with the various parties, and their roles and interests, in a typical restructuring
- have insights into the different legal and negotiating alternatives for resolving differences in interests across parties to facilitate deal conclusion
- understand how to assess the key elements of a distressed situation as well as the various “puts and takes” across parties to the restructuring that will ultimately drive the outcome

[Grades will be based upon individual performance assessed based upon a paper exploring a self-selected topical issue of modern chapter 11 practice and course participation (each of which will have multiple components).<sup>1</sup>]

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<sup>1</sup> Students are highly encouraged to coordinate with the teaching assistants with respect to generating an acceptable paper topic.

## **Course Schedule**

### **Course Introduction**

#### Course Introduction

We will introduce the logistics elements of the course in this opening session. With the remaining time, the primary concepts to be discussed will be introduced and context will be provided.

#### Pre-Reading

- There is no pre-reading for the first session

## **Class 2**

### Bankruptcy Background (Part 1 of 2)

We will explore the benefits and burdens of chapter 11, case timelines, and key players.

#### Readings

- James H.M. Sprayregen, *et al.*, *Chapter 11: Not Perfect, But Better than the Alternatives*, 14 J. BANKR. L. & PRAC. 6 (Dec. 2005).
  - An overview of the pros and cons of bankruptcy from the head of K&E's restructuring practice.
- James H.M. Sprayregen, *et al.*, *The Race to the Starting line: Developing Prepackaged and Prenegotiated Reorganization Plans to Maximize Value, in Navigating Today's Environment*, The Directors' and Officers' Guide to Restructuring (2010).
  - A comparison of prepackaged versus prearranged plans.

## **Class 3**

### Bankruptcy Background (Part 2 of 2)

We will continue to explore the benefits and burdens of chapter 11, case timelines, and key players.

#### Readings

- Douglas G. Baird & Robert K. Rasmussen, *Antibankruptcy*, 119 YALE L. J. 648 (2009-2010) (skim for background and context).
  - A seminal text on the basics of bankruptcy.

## **Class 4**

### Financing Considerations

We will discuss the ways a case can be financed, including issues related to adequate protection

and cash collateral, DIP financing, and intercreditor issues.

### Readings

- *Westmoreland Coal Company Debtor-in-Possession Financing* [Docket No. 520] (skim for context).
  - An example of court-approved DIP financing.
- *What Every Secured Creditor (and Its Lawyer) Should Know About Chapter 11*, ABI Journal Saturday, November 1, 2003.
  - An overview of key issues related to the use of a secured lender's cash collateral.

## **Class 5**

### Operations in Bankruptcy

We will explore a debtor's disclosure obligations, the automatic stay, and issues related to contracts and vendors.

### Readings

- Norton Bankruptcy: *Enjoining Litigation Against Third Parties*.
  - An analysis of the extension of the automatic stay to litigation by creditors against third-parties, a hot topic in current restructuring cases.
- *In re Penn Traffic Co.*, 524 F.3d 373 (2d Cir. 2008).
  - The court discusses the executory nature of contracts, and the implications for a creditor.

## **Class 6**

### Sales in Bankruptcy

We will discuss the key issues in selling assets in bankruptcy, including the requirement to sell free and clear, and credit bidding.

### Readings

- Hearing Transcript: *Claire's Stores Inc.* (focus on pages 204 - 220, balance is for reference / context).
  - An example of the importance of running a thorough and fair marketing process -- the Company was running a bankruptcy process but when a lender objected, following extensive litigation and testimony, the bankruptcy judge ordered a new marketing process, starting over and extending the timeline.
- Radulovic, Branko, *The Effect of § 363 Sales on Recovery Rates: Allowing for Self Selection Bias (Working Paper)*, Parts III, VIII (focus on the background of §363 sales and the conclusion, skim balance of the paper).
  - An empirical analysis of the choice between § 363 sales and restructurings

## Class 7

### Plan Design Process

We will discuss the key issues in developing a chapter 11 plan of reorganization, including claim priorities, classification and releases.

#### Readings

- *Reports of the Demise of 'Gifting' Chapter 11 Plans Are An Exaggeration*
  - The article explains the classification and priority scheme of the bankruptcy code, as well as certain limitations thereto
- *Hearing Transcript: Cenveo* (focus on pages 27 - 29, balance is for reference / context).
  - The court dealt with the issues of opt-in vs opt-out releases, exculpating non-fiduciaries, and issues related to releases.

## Class 8

### Plan Solicitation and Confirmation

We will discuss the key issues in soliciting and confirming a chapter 11 plan of reorganization, including exclusivity, disclosure, voting, disclosure and solicitation, plan confirmation, and the plan effective date.

#### Readings

- *Seadrill Plan and Disclosure Statement* (skim for context / reference).
  - An example of a recent chapter 11 plan and disclosure statement, with some unique features.
- *In re Transwest Report Properties, Inc.* (9th Cir. 2018).
  - One key issue in plan confirmation is whether the plan is confirmed on a by-debtor basis or all-debtor basis. This is the first circuit level decision on the issue.

## Class 9

### Creditor Causes of Action

We will discuss claims and causes of action that can be asserted against a distressed company, including a focus on issues in fiduciary duty law for directors in distressed situations.

#### Readings

- *In re HH Liquidation, LLC* (Bankr. D. Del, 2018) (skim the facts and focus on the court's methodology and analysis of the claims).
  - Creditors' committee brought seventy-eight claims and causes of action against creditors and the debtors' board of directors (including recharacterization, equitable subordination, breach of fiduciary duty, corporate structuring, and substantive consolidation) all of which were denied by the court .

## **Class 10**

### Valuation Panel

A leading investment banking advisory firm will give an overview of:

- Key corporate finance principles (e.g., net present value, EBITDA).
- Valuation methodologies and mechanics (e.g., comparable company analysis, precedent transactions analysis, discounted cash flows analysis).
- The role of valuation in a corporate restructuring (e.g., valuation as a consideration for plan confirmation and fraudulent transfers, judicial determinations of valuation).
- Motivations and goals of key players in the restructuring arena.

## **Class 11**

### Valuation Follow-Up

We will further explore valuation in the distressed context, building on the work done in the valuation panel.

### **Panel Classes**

- Case studies on high-profile restructurings from the past year
- Distressed investing hedge fund founder panel

\* Active student participation is *highly* encouraged. A question must be submitted on Canvas in advance of the panel.